

IN THE HIGH COURT OF GUJARAT AT AHMEDABAD

SPECIAL CIVIL APPLICATION No. 11095 of 1998

For Approval and Signature:

Hon'ble MISS JUSTICE R.M.DOSHIT

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1. Whether Reporters of Local Papers may be allowed : YES
to see the judgements?
 2. To be referred to the Reporter or not? : NO
 3. Whether Their Lordships wish to see the fair copy : NO
of the judgement?
 4. Whether this case involves a substantial question : NO
of law as to the interpretation of the Constitution
of India, 1950 of any Order made thereunder?
 5. Whether it is to be circulated to the Civil Judge? : NO

YAKUB YUSUF PATEL

Versus

COMMISSIONER OF POLICE SURAT

Appearance:

MR AS DAVE for the petitioner.

MS PUNANI AGP for the respondents.

CORAM : MISS JUSTICE R.M.DOSHIT.

02-08-1999.

ORAL JUDGMENT :

Heard the learned advocates for the respective parties.

The petitioner challenges the order of preventive detention dated 14th December, 1998, made by the Commissioner of Police, Surat City, under the powers conferred upon him under sub-section (1) of section 3 of

the Gujarat Prevention of Anti Social Activities Act, 1985 (hereinafter referred to as 'the Act').

The petitioner is alleged to be a 'dangerous person' within the meaning of section 2 (c) of the Act, and his activities are prejudicial to the maintenance of public order. Two offences punishable under Chapter-XVI of the IPC are registered against the petitioner and are pending trial. In both the said cases, weapons were recovered from the petitioner. Besides, two persons have, on assurance of anonymity, given statements in respect of the nefarious activities of the petitioner and the incidents that occurred on 30th October, 1998 and 29th November, 1998 which had adversely affected the public tranquility and the even tempo of life.

The order of detention is assailed on the grounds (a) there is an inordinate delay in invoking the provisions of the Act and (b) the vital documents being the bail application preferred by a co-accused Mumtazben and the order made thereon were not placed before the Detaining Authority for his consideration and the subjective satisfaction recorded by the Detaining Authority is not based on all the relevant and vital materials. The same is, therefore, vitiated. In support of this contention, Mr. Dave has relied upon the judgment of the Hon'ble Supreme Court in the matter of STATE OF UP VS KAMAL KISHOR SAINI (1988 (1) SCC, 287).

I am afraid, I am unable to agree with either of the contentions raised by Mr. Dave. The offence punishable under section 302 of the IPC has been registered against the petitioner on 8th June, 1998. The petitioner was arrested on the same day and was ordered to be released on bail on 14th September, 1998. Thereafter, the above referred two incidents of 30th October, 1998 and 29th November, 1998 had occurred, for which the witnesses had given statements on 2nd December, 1998 and 3rd December, 1998. Both the statements were verified by the Detaining Authority on 11th December, 1998 and the impugned order has been made on 14th December, 1998. Keeping in view these dates, I am unable to agree that the delay has been caused in invoking the provisions of the Act which should vitiate the impugned order of detention. Mr. Dave has vehemently argued that as laid down by the Supreme Court in the matter of Kamal Kishor Saini (supra), an application for bail made by the co-accused is a vital document. He has relied upon the averments made in paragraph-9 of the petition. It is stated therein that the co-accused Mumtazben had moved an application for release on bail which was considered by

the learned Sessions Judge and allowed. The said application and the order made thereon, therefore, were vital documents which ought to have been placed before the Detaining Authority before he recorded his subjective satisfaction. I am unable to agree with the contention that any application for bail made by any of the co-accused would be a vital document ipso-facto. In the matter of Kamal Kishor Saini (supra), the incident in question had occurred in the Collectorate when one under-trial prisoner while was being brought back from the court was shot-dead allegedly by the detenue Kamal Kishor and one another detenue. However, the names of the said detenues were not disclosed in the FIR lodged by the concerned Police Head Constable, but their names were disclosed in the statements of the witnesses recorded under section 161 CR.PC. Besides, in the application for bail made by the detenue and the other co-accused, it was averred that both the said detenues were wrongly implicated. This averment was also supported by the affidavit of some under-trial prisoners. It was under the above referred circumstances, the court held that the statements recorded under section 161 CR.PC and the averments made in the application for bail and the supporting documents i.e. statements made by the other under trial prisoners were vital documents which ought to have been considered by the Detaining Authority before recording his subjective satisfaction. It is evident that in the said case, the factum of the detenu's involvement was discovered from the statements recorded under section 161 CR.PC and the said fact was controverted by the statements made by the other under trial prisoners. All these documents were necessarily vital documents which ought to have been considered by the Detaining Authority before recording his subjective satisfaction. The said decision, therefore, can not be applied to the facts of the present case. Merely because one of the co-accused has made an application for bail and such an application has been granted by the concerned court, the application or the order made thereon do not become vital documents. Mr. Dave has not been able to show that any averment made in the said application or the order made thereon relate to the complicity of the petitioner herein in the alleged commission of the crime. In absence of such material, the said application or the order made thereon can not be said to be a vital document which ought to have been taken into consideration by the Detaining Authority before recording his subjective satisfaction. Such subjective satisfaction, therefore, would not be vitiated as contended. No other ground is urged before me.

Petition is dismissed. Rule is discharged.

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JOSHI*